



FORTE TAX & LAW

NEW REGULATIONS OVERVIEW  
RUSSIA 2018

## DEAR CLIENTS,

On behalf of the entire Forte Tax & Law team, I would like to wish you a happy New Year and a great start to the new business season! We hope that 2018 will be filled with success and achievements. To this end, we have put together a brief overview of the most important changes to be introduced to Russian laws so that you can be forewarned, and thereby forearmed, when they come into force in 2018.

Traditionally, the greatest number of changes is introduced to tax laws. A number of changes, which were pretty much expected, resulted from extensive work done to implement measures intended to combat tax base erosion and profit shifting to low or no-tax locations (BEPS Action Plan). They were also some surprises, and some amendments to the Tax Code were “thrown in” at the end of 2017. We also need to note that despite the moratorium declared by the President of Russia on increase in the tax burden on businesses until 2019[1] some changes will still result in actual tax burden increase.

Customs laws have been subject to major changes following the introduction of a new Eurasian Economic Union Customs Code to replace the Customs Union Customs Code. We have not covered this change here as it is so momentous that it deserves a separate review. Let’s just say that the Eurasian Economic Union Customs Code, which entered into force on January 01, 2018, is meant to simplify and speed up customs formalities.

The wind of change has not steered clear of currency, civil, labor and migration laws. Although these areas have not been subject to a re-working as far-reaching as tax and customs laws, some changes are rather substantial for business.

Below you will find a brief overview of the new laws that will be introduced in 2018. We would be pleased to discuss these changes with you as well as assist in adapting the business processes in place in your company to those changes. Adapting to changes is indeed a very savvy business move because, as Charles Darwin stated, it is not the strongest that survives, but those who are able best to adapt and adjust to the changing environment in which they find themselves.

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# CHANGES TO TAX LAWS

## IT WILL BE HARDER NOW TO FINANCE RUSSIAN SUBSIDIARIES GRATUITOUSLY

The list of grounds for profit tax exemption for financing received gratuitously by Russian subsidiaries from their shareholders has been substantially shortened as of January 01, 2018. In particular, the possibility for Russian subsidiaries not to recognize the following income as taxable is now limited:

- Property and non-property rights (except for intellectual rights) received gratuitously from their shareholders, and
- Debt forgiveness by shareholders.

For more detailed information, please click [here](#)

If you plan to finance subsidiaries or increase their net assets, we recommend reviewing the actions you have intended to take in view of the above changes

## TAX ON MOVABLE PROPERTY IS BACK

If until January 01, 2018 movable property owned by organizations[2] (with some exceptions) was not subject to property tax[3], then starting from 2018 tax exemption will be up to how each constituent entity of Russia regulates this matter[4]. The constituent entities of Russia are now entitled to adopt laws exempting movable property from tax as well as reducing the property tax rate. If such law is not adopted, movable property will be subject to 1.1% tax in 2018[5]

So, for instance, movable fixed assets are fully exempt from property tax in St. Petersburg provided that no more than 3 years have passed since their date of manufacture[6]. Other fixed assets will be taxed at 1.1% [7]. No tax exemption has been provided in Moscow for movable property so all movable fixed assets will be taxed at 1.1% in 2018

## INVESTMENT TAX DEDUCTION

The regions are entitled to grant so-called investment tax deduction which allows taxpayers to deduct from their amount of payable profit tax the amount they have invested in fixed assets.[8]

When taxpayers decide to apply this investment tax deduction, they are not entitled to accrue depreciation for the relevant fixed assets so investment deduction ends up replacing usual depreciation. However, when investment tax deduction is applied, unlike depreciation, it is not the tax base which is reduced but the amount of payable profit tax. And that is what could make this deduction a very attractive tool to reduce the tax burden of profitable companies.

When taxpayers apply this tax benefit, they deduct up to 90% [9] of their investments in fixed assets from the regional part of profit tax, and 10% from the federal part. When applying investment tax deduction, the regional part of profit tax cannot, however, be reduced down to 0, and at least 5% tax is to be paid to the regional budget. If taxpayers cannot apply the full investment tax deduction because of this rule, they will be entitled to use the “remaining” regional part of the deductible amount in the next tax period (federal tax deduction cannot be carried forward). However, the region could still decline any deduction carried forward.

Investment tax deduction may be granted for fixed assets from depreciation groups 3-7, i.e. fixed assets with a useful life from 3 to 20 years, but regional limitations may be introduced for certain categories of fixed assets enjoying exemption.

As a general rule, when taxpayers apply investment tax deduction, they must do so for at least three years. Moreover, this deduction may not be applied selectively. It is applied only collectively to all fixed assets meeting the criteria set out by law.

Although this change appears to be an attractive benefit for taxpayers, investment tax deduction is at risk of remaining only on paper since it requires the adoption of regional laws for its implementation, and the regions have, thus far, been in no hurry to adopt such laws. We also expect the conditions for this deduction to vary significantly from region to region so that its implementation will give rise to competition between regions.

## CbCR OR NEW TRANSFER PRICING REPORTING

On the back of the world trend to combat tax base erosion and profit shifting to low or no-tax locations, Russia joined already in January 2017 the Multilateral Competent Authority Agreement on Country-by-Country Reporting ([CbCR MCAA](#)). CbCR MCAA allows all participating countries to exchange bilaterally and automatically the country-by-country reports of their respective taxpayers as provided in BEPS Action Plan 13. These country-by-country reports should contain information on the distribution of income, profits, and taxes among the companies of multinational groups, as well as information on the human and material resources they use. Taking into account the volume and nature of the information provided in these country-by-country reports, dubious distortions in income distribution in multinational groups of companies should become very clear.

Provisions have been added to the Russian Tax Code for CbCR MCAA purposes. These new provisions require taxpayers participating in multinational groups to prepare and submit additional reporting to the Federal Tax Service of Russia[10]. Relatively small international groups are, however, exempted from this obligation provided their turnover for the previous financial year does not exceed:

- RUB 50 billion if their parent company is a Russian tax resident;

*or*

- the amount for the obligation to submit a country-by-country report as

set by the parent company's country of residence.

Additional transfer pricing reporting consists of:

- Notice of participation in an international group of companies
- Country-by-country report (CbCR)
- Master file (in Russian: Global Documentation)
- Local file (in Russian: National Documentation)

*Country-by-country reports* provide general information about revenues, profits, and profit tax amounts. They also specify the number of employees, intangible asset value and the capital of international groups of companies. All these data are to be broken down by countries of presence. These reports are submitted every year to the Federal Tax Service either by the parent company or an authorized multinational group participant, but only if they are Russian tax residents. The first submission....

## CbCR OR NEW TRANSFER PRICING REPORTING

....deadline is December 31, 2018.

If the parent company or the authorized participant are not tax residents of Russia, and if they evade submitting country-by-country reports in their own country, or are residents of countries with which Russia does not exchange country-by-country reports, then the Federal Tax Service may request such reports from a group participant who is a Russian taxpayer.

*Master file* consists of general information about the international group and its activities: group structure, market presence, factors affecting financial result, description of supply chain for main products, description of major intragroup contracts, brief functional analysis, and information on group intangible assets, etc.

*Local file* is in fact the transfer pricing documentation, which has already become familiar to everyone, with minor additions.

International group participants do not submit master and local files automatically, but only at the request of the Federal Tax Service. Please note that master files could be requested already in 2018.

The Federal Tax Service will exchange (receive and send) country-by-country reports automatically with tax authorities in other countries. This is important for all taxpayers-participants in multinational groups because now tax authorities around the world will be able to see very clearly where value is created and where taxes are paid (not paid) on such value. We recommend preparing test CbCR as soon as possible to understand how your transfer pricing system will appear to tax authorities and whether there are any distortions in profit distribution among jurisdictions.



# INTERNATIONAL EXCHANGE OF FINANCIAL INFORMATION FOR TAX PURPOSES

Financial information is exchanged automatically based on the [OECD Convention on Mutual Administrative Assistance in Tax Matters of 1988](#) and Multilateral Competent Authority Agreement on the Exchange of Country-by-Country Reports (MCAA) joined by Russia already in 2015 and 2016 respectively. These documents provide that tax authorities in participating countries will collect from financial organizations certain information about customers and exchange this information automatically.

New provisions were introduced to the Russian Tax Code on November 27, 2017 to ensure that automatic exchange became effective in Russia. These provisions require financial organizations to[11]:

- Take measures to establish the tax residency of clients, beneficiaries, and entities directly or indirectly controlling them, including by verifying the accuracy and completeness of the information provided by clients;

- Submit to the Federal Tax Service financial information about clients, beneficiaries, and entities directly or indirectly controlling them, if they are tax residents in countries other than Russia. [12]

The Federal Tax Service will automatically send the information received from financial organizations to tax authorities in other countries with which automatic exchange has been put in place. The Federal Tax Service intends for the time being sending information to 60 countries and 13 territories.[13]





## SEPARATE VAT ACCOUNTING

The introduction of new rules for separate VAT accounting will increase the administrative burden on business.

Taxpayers performing activities subject to VAT as well as activities not subject to VAT apply special rules to deduct input VAT. So, if purchased goods (work, services, rights) are used in:

- activities subject to VAT, then input VAT may be deducted;
- activities not subject to VAT, then input VAT may not be deducted;
- in both types of activities, then input VAT may be deducted only partially.

Taxpayers engaged in operations both subject and not subject to VAT must keep separate accounting of input VAT. There was one exception to this rule until January 01, 2018 so taxpayers were not required to keep separate accounting when the expenses incurred for operations not subject to VAT did not exceed 5% of the total amount of the expenses incurred by taxpayers.

But separate accounting of input VAT will be mandatory in 2018 regardless of whether or not the expenses incurred for operations not subject to VAT exceed 5% of total expenses [15].

## TAX FREE FOR PEOPLE VISITING RUSSIA

A tax free regime will be introduced in Russia [16] for all foreign nationals except for citizens from the Eurasian Economic Union. Under this tax free regime, foreign nationals will be compensated the VAT paid upon purchase of goods in retail stores provided the following conditions are met:

- (1)The purchase amount exceeds RUB 10,000;
- (2)Purchased goods are not excisable;
- (3)Purchased goods are exported from Russia within 3 months;
- (4)Goods have been purchased tax-free retail stores (included in a special list compiled by the Ministry of Industry and Trade).

## ABILITY TO WAIVE ZERO VAT RATE

Taxpayers are now entitled to choose not to apply 0% VAT on exported goods, as well as on certain services related to the transportation of these goods [14]. It is important to note that this waiver may be extended to all the operations for sale of goods under the export regime and to certain services related to their transportation, but it may not be applied selectively. Such waiver is valid for at least 12 months.

## HONG KONG IS NO LONGER OFF-SHORE

Hong Kong was excluded on January 01, 2018 from the list of offshores [17] compiled by the Russian Ministry of Finance. This means that dividends paid by Hong Kong companies to Russian recipients may be subject to 0% profit tax [18], and transactions with unrelated companies from Hong Kong will no longer be recognized as controlled transactions for transfer pricing purposes [19].



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# CHANGES TO CURRENCY REGULATIONS

## NEW REPORTING ON FOREIGN TRADE CONTRACTS

Directive No. 138-I [20] of the Central Bank of Russia will no longer be operative from March 2018. This directive, which determines how to draw up and submit reporting on foreign trade contracts, will be replaced with Directive No. 181-I[21] , which, despite what was expected, will not overall reduce the administrative burden on companies upon conclusion of such contracts. The new directive, among others, will:

–Revoke the obligation for companies to open transaction certificates (passports of transaction) in banks. Instead, foreign trade contracts will need to be registered with banks, and as part of this registration, companies will be required to submit almost the same documents and information that they had to submit to open transaction certificates;

–Provide export companies with the right of fast-track registration of foreign trade contracts within one working day;

–Increase the amount of obligations under foreign trade contracts for which registration is required: RUB 6 million for export contracts, and RUB 3 million for import and credit contracts (previously this amount was USD 50,000);

–Revoke the obligation for companies to submit to banks currency transaction statements, but companies will still be required to submit documents supporting such transactions to banks.

There will be no need to close the transaction certificates opened before March 01, 2018 as banks will themselves recognize such certificates closed and register the contracts for which they had been opened[22] . Although the procedures introduced by the new directive do not change anything radically, companies will still need to restructure their business processes and update their automation programs.



# RESIDENCY CRITERIA AND CONTROL OF FOREIGN ACCOUNTS

Towards the end of 2017, important changes were introduced to Federal Law on Currency Regulation and Currency Control. These changes have affected the determination of currency residency for Russian citizens, the obligation to notify of accounts abroad and of cash flow on those accounts. They have also amended a list of permitted currency transactions.

So, since January 01, 2018, all citizens of Russia are residents of Russia for currency control purposes regardless of whether or not they live in a foreign country and the duration of their stay in that foreign country [23]. However, the law still ties rights and obligations to the duration of residence outside Russia: from January 01, 2018 onwards, any individuals residing outside Russia for more than 183 days in a calendar year will:

- not be required to notify Russian tax authorities of opened (closed) accounts and deposits, of movement on those accounts and of change of their details in banks located outside Russia;
- not be subject to restrictions on transactions that they are entitled to conduct on their accounts opened outside Russia [24]

The list of currency transactions that may be concluded by residents (individuals) on foreign bank accounts has been extended since the New Year by including the following [25]:

- Receipt from non-resident individuals of payment for sold vehicles owned by resident individuals outside Russia;
- Receipt from non-resident individuals of payment for sold real estate property owned by residents outside Russia provided the property was registered in a country which is a member of the Organization for Economic Cooperation and Development (OECD) or the Financial Action Task Force for Money Laundering (FATF).

The receipt of taxes returned to residents by competent state authorities in the host country[26] is another transaction which has been permitted since January 01, 2018 for all residents, and not only for individuals







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# CHANGES TO LABOR AND MIGRATION LAWS

## NEW GROUNDS FOR LABOR INSPECTION

Since January 11, 2018, the State Labor Inspectorate of Russia has been entitled to conduct unscheduled inspection of employers based on yet another ground, i.e. the receipt from anyone of information about [27] :

- Avoidance of conclusion of employment contract;
- Improper drafting of employment contract (for example, when some mandatory terms and conditions are omitted from employment contracts);
- Conclusion of a civil law contract regulating an actual employment relationship between employer and employee.

Inspections on this ground will be conducted immediately after the prosecutor's office has been notified, and employers will not be notified and give their consent to such upcoming inspections [28]

## NEW FORMAT FOR INSPECTIONS OF EMPLOYERS

Many companies got an unpleasant New Year's surprise when they found out that they were in the list of scheduled inspections for 2018. If an inspection of compliance with labor laws is scheduled for your company, you will be pleased to know that from July 01, 2018 the State Labor Inspectorate will conduct scheduled inspections in a new way, i.e. by using checklists. Certain employers will be subject to this new procedure as early as January 01, 2018. The Russian Labor and Employment Service (Rostrud) has to date drawn up 107 checklists intended to monitor employers' compliance with labor laws. For more detailed information, please click [here](#)

## SOCIAL INSURANCE CONTRIBUTIONS

Social insurance contributions will be paid as follows in 2018 [30] :

- (1) Pension insurance: 22% of payments up to RUB 1,021,000 for each individual, and 10% of payments exceeding this amount;
- (2) Health insurance: 5.1%
- (3) Social insurance: 2.9% of payments up to RUB 815,000 for each individual. No social insurance is paid on amounts exceeding this threshold.

## FIFA 2018

We are all looking forward to the FIFA 2018 World Cup in Russia, and besides undoubtedly spectacular matches, some restrictions are also expected.

A special procedure for registering foreign nationals with migration authorities will be in place from May 25, 2018 to July 25, 2018 in the following cities: Moscow, St. Petersburg, Volgograd, Yekaterinburg, Kazan, Kaliningrad, Nizhniy Novgorod, Rostov-on-Don, Samara, Saransk, and Sochi [29]

Companies employing foreign nationals will be required to register them with migration authorities within one day of their date of entry into the abovementioned cities. Documents will need to be submitted directly to the migration service. Post offices and service centers will not accept documents for migration registration.

A similar procedure for registering with migration authorities was put in place in 2017 for the FIFA Confederations Cup 2017. It should be noted that these requirements can be met with proper planning and provided the persons responsible for registering foreign nationals are duly informed. The main inconvenience of this procedure is that it requires visiting the migration service on Saturday or Sunday if foreign nationals arrive on Friday or Saturday

## SPECIAL ASSESSMENT OF WORKING CONDITIONS

All companies must conduct a special assessment of working conditions before the end of 2018 in “provisionally safe” workplaces that were previously not certified and that also meet the following criteria [33]:

- Places with no harmful and/or hazardous working conditions that would warrant the provision of additional guarantees and compensations to employees;
- Employees do not receive the right for early retirement for working in those places;
- Places put into operation before January 01, 2014.



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# CHANGES TO CIVIL LAWS



## LOAN AND CREDIT CONTRACT

Amendments to the regulation of loans and credits will enter into force on June 01, 2018. So in six months[35] :

–Loan agreements (except for the agreements under which loans are granted to individuals) will be deemed concluded as soon as the parties agree upon the loan amount. Currently, such agreements are deemed concluded after the loan amount is agreed and money is transferred (another item is loaned);

–Courts will be able to reduce excessively onerous (usurious) interest under loans granted to individuals. This rule will not, however, apply to consumer loans and credits which are a subject to separate regulation;

–Credit contracts may and should specify not only interest rate, but also all other payments related to credit provision (with some exceptions).

## BANK ACCOUNTS, LETTERS OF CREDIT AND FACTORING

Starting from June 01, 2018, there will be more bank accounts available [36] :

–Joint accounts for individuals;

–Accounts for precious metals;

–Public deposit accounts which will be opened for notaries, bailiffs and other persons. These accounts are intended for debtors so that they can deposit cash that can later be transferred to beneficiaries.

From June 2018, significant changes will also be introduced to the regulation of letters of credit and factoring. For example, transferrable letters of credit will be available then. Under such letters, the recipient of cash may request a bank to pay a third party indicated by the recipient.



## ESCROW (ESCROW DEPOSIT)

One of the most important changes to civil laws is the addition of a whole section in the Russian Civil Code. This section is dedicated to an instrument popular in the West, i.e. escrow (escrow deposit) [34] and will be added on June 01, 2018.

To put it simple, imagine that you have to transfer an item to a buyer, but you are not sure that the buyer will pay in time after the item is transferred. The buyer is also not sure that if he pays you first, the item will be transferred in time. This is where the concept of escrow becomes useful as it is intended to resolve this “first step” issue. Escrow essentially consists in one person (depositor) transferring a certain property to an escrow-agent that guarantees the property safekeeping and transfers it to a counterparty (beneficiary) when certain circumstances have occurred (for example, when the beneficiary has performed certain actions or upon occurrence of certain events). In our example, the seller can transfer the item to the escrow-agent, and as soon as the buyer has paid, the escrow-agent will transfer the item to the buyer.

If the circumstances specified in escrow agreements do not occur within a certain period, the escrow-agent are required to return the received property to the depositor.

Movable things (including cash, certificated securities and documents), non-cash funds and non-certificated securities may be transferred to escrow-agents. Escrow agents must record received property on a separate balance sheet. It is not allowed to recover, seize property in escrow, or include it in interim measures for debts owed by escrow-agents or depositors.

Some clarifications have also been introduced to the regulation of escrow accounts that were put in place as early as 2014. These clarifications:

- (1) Determine who exactly is the owner of funds on escrow account (the depositor until the date of transfer of cash to the beneficiary, and after the beneficiary);
- (2) Introduce a ban on the suspension of escrow account transactions, as well as on the seizure and withdrawal of funds from escrow account for the depositor's or the beneficiary's obligations to third parties.

We hope that you will find this review relevant and useful.

We would also be pleased to discuss the above changes and assist you in adapting to them because the key to success is the ability is to adapt quickly to changes, and your success is important to us.

Yours faithfully,

The Forte Tax & Law Team

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## LINKS

1. Russian President's address to the Federal Assembly in 2014 and 2015
2. Movable property recorded in accounting after January 01, 2013 as fixed asset
3. Article 381(25) Russian Tax Code
4. Article 381.1 Russian Tax Code
5. Article 380(3.3) and (4) Russian Tax Code
6. Article 11-1(1(25)) St. Petersburg Law No. 81-11 On Tax Concessions dated July 14, 1995
7. Article 380(3.3) and (4) Russian Tax Code
8. Article 286.1 Russian Tax Code. Acquisition, setting up of new fixed assets as well as refitting, reconstruction, modernization, upgrading of existing fixed assets
9. The regions may provide for a smaller amount.
10. Articles 14.4-1 and 20.2 Russian Tax Code
11. Financial organizations refer to credit organizations, insurers providing voluntary life insurance, professional participants in the securities market engaged in brokerage and/or securities management and/or depositary activities, management companies of investment funds, etc.
12. Federal Law No. 340-FZ Amending Part I of the Russian Tax Code for Implementation of International Automatic Exchange of Information and Documentation for International Groups of Companies dated November 27, 2017; Article 20.1 Russian Tax Code
13. <http://regulation.gov.ru/projects#npa=77203>
14. Article 164(7) Russian Tax Code
15. Article 170(4) Russian Tax Code
16. Article 169.1 Russian Tax Code
17. Ministry of Finance Decree No. 175-n dated November 02, 2017
18. Article 284(3(1)) 284 Russian Tax Code
19. Article 105.14(1(3)) Russian Tax Code
20. Central Bank Directive No. 138-I on procedure for submission to authorized banks by residents and non-residents of documents and information related to currency transactions, procedure for opening transaction certificates, and procedure for accounting by authorized banks of currency transactions and control over such transactions dated June 04, 2012; Bank of Russia Order No. 4629-U dated November 29, 2017



## LINKS

21. Central Bank Directive No. 181-I on procedure for submission to authorized banks by residents and non-residents of supporting documents and information upon conclusion of currency transactions, accounting forms and reporting on currency transactions, procedure and deadlines for their submission

22. Article 18 Bank of Russia Directive No. 181-I dated August 16, 2017

23. Article 1 Federal Law No. 427-FZ dated December 28, 2017; Article 1(1(6)) Federal Law No. 173-FZ On Currency Regulation and Currency Control dated December 10, 2003

24. Article 12(8) статьи 12 Federal Law No. 173-FZ On Currency Regulation and Currency Control dated December 10, 2003; Article 1(3(i)) Federal Law No. 427-FZ dated December 28, 2017

25. Article 12(5.1) Federal Law No. 173-FZ On Currency Regulation and Currency Control dated December 10, 2003; Article 1(3(d)) Federal Law No. 427-FZ dated December 28, 2017

26. Article 12(5) Federal Law No. 173-FZ On Currency Regulation and Currency Control dated December 10, 2003; Article 1(3(c)) Federal Law No. 427-FZ dated December 28, 2017

27. Federal Law No. 502.-FZ dated December 31, 2017 Amending Article 360 of the Russian Labor Code; Article 360(5) Russian Labor Code

28. Federal Law No. 502.-FZ dated December 31, 2017 Amending Article 360 of the Russian Labor Code; Article 360(9) Russian Labor Code

29. Presidential Decree No. 202 On Particularities of Application of Measures Tightening Security during the FIFA World Cup 2018 in the Russian Federation and the FIFA Confederations Cup 2017

30. Articles 425 and 426 Tax Code; Governmental Decree No. 1378 dated November 15, 2017

31. Payments and other remuneration specified in Article 420(1) of the Russian Tax Code except for the amounts specified in Article 422 of the Russian Tax Code

32. Article 27(6) and Article 28(1) Federal Law No. 426-FZ On Special Assessment of Working Conditions dated December 28, 2013; Ministry of Labor Letter No.15-1/OOG-5597 dated October 20, 2015

33. Article 10(6(1)) and Article 10(6(2)) Federal Law No. 426-FZ On Special Assessment of Working Conditions dated December 28, 2013

34. Federal Law No. 212-FZ dated July 26, 2017; Articles 860.7 – 860.10, 826.1 – 826.8 Russian Civil Code

35. Federal Law No. 212-FZ dated July 26, 2017; Articles 807, 809 and 819 Russian Civil Code

36. Federal Law No. 212-FZ dated July 26, 2017, Articles 845, 859.1, 860.11 – 860.15 Russian Civil Code